

# COMPLAINTS & ALLEGATIONS BY COUNCIL DISTRICT

## CHAPTER 6

### COMPLAINTS FILED BY COUNCIL DISTRICT

In this chapter, complaints and their allegations are analyzed by Council District. The first column in Illustration 6A lists the Council District<sup>13</sup> and its corresponding Council Member. A Council

District indicates the location where the incident that lead to a complaint occurred. Unknown/ Outside City Limits means the location of the incident could not be identified or the incident did

not occur within the San José city limits. The first column in Illustration 6A lists the type of complaints<sup>14</sup>: Formal (CI or DI), Informal (IN), Policy (PO), Procedural (PR), No Boland (NB) and Inquiry (IQ).

**Illustration 6A:** Complaints by Council District

Council Districts	CI	DI	IN	PO	PR	Subtotal	NB	IQ	Total Cases
1 LEZOTTE	3	0	4	1	2	10	2	15	27
2 POWERS	12	0	9	1	2	24	0	25	49
3 CHAVEZ	72	11	15	6	11	114	15	110	240
4 MATTHEWS	12	0	3	1	6	22	3	19	44
5 DIAZ	29	1	6	1	7	44	4	31	79
6 FISCALINI	11	1	3	1	2	18	5	26	49
7 SHIRAKAWA, JR.	23	1	7	1	3	35	0	20	55
8 WOODY	12	2	4	1	2	21	1	19	41
9 DIQUISTO	8	0	4	2	1	15	1	10	26
10 DANDO	7	0	5	1	3	16	3	23	42
Unknown/Outside City Limits	10	14	1	2	2	29	0	36	65
Total Cases Received	199	30	61	18	41	349	34	334*	717
Formal: CI = Citizen-Initiated & DI = Department-Initiated, IN = Informal, PO = Policy, PR = Procedural, NB= No Boland and IQ = Inquiry									

\* Note that in 1999, the **total Inquiry cases received were 436**. Illustration 6A does not reflect this total due to 102 Inquiry cases were unlogged on the new database system in the conversion that was tested on January 1999 and effective March 1999. In the three month time period of 1999, 102 Inquiry cases were unable to be accounted for by council district. The **total cases received in 1999 were 819**.

<sup>13</sup> See Appendix C (San José City Council District Map).

<sup>14</sup> See Appendix A (Classification of Complaints).

Illustration 6A shows the numbers of complaints received from January 1 through December 31, 1999. Typically, the highest number of cases (240 or 33% of all complaints) were generated in District 3, largely because of the diverse activities generated in the downtown area. District 5, a neighboring district, has the second highest number of complaints (79); District 7 has the fourth highest number of complaints (55); and District 6 has the fifth highest number of complaints (49). The complaints classified as occurring in Un-

known/Outside City Limits generated the third highest number of complaints because 42 out of 65 complaints were not able to identify where the incident occurred.

Illustration 6B shows a comparative five year analysis of classified complaints by Council District. The time period is January 1 through December 31 for the year 1995 through 1999. Please note that the total cases received in 1999 include 334 Inquiry cases, making the total higher than other years. In

Illustration 6B, the effects of more scheduled activities in certain districts appears to generate more complaints. This becomes apparent when comparing the complaints generated in Districts 3, 5, 6, and 7 each year.

**Illustration 6B:** Five Year Analysis of Classified Complaints by Council District

Council Districts	Jan. - Dec. 1995	Jan. - Dec. 1996	Jan. - Dec. 1997	Jan. - Dec. 1998	Jan. - Dec. 1999
1 LEZOTTE	31	28	27	13	27
2 POWERS	33	50	24	21	49
3 CHAVEZ	143	208	156	131	240
4 MATTHEWS	24	37	15	16	44
5 DIAZ	42	59	46	29	79
6 FISCALINI	39	66	42	26	49
7 SHIRAKAWA, JR.	40	35	45	39	55
8 WOODY	37	41	17	23	41
9 DIQUISTO	27	28	30	19	26
10 DANDO	27	39	20	15	42
Unknown/Outside City Limits	13	16	24	32	65
Total Cases Received	456	607	446	364	717 *

\* Please note that Inquiry cases are not reflected in the total cases received for 1995, 1996, 1997, and 1998. However, the total cases received in 1999 do include Inquiry cases. Please keep in mind that the total cases received in 1999 are 819, one hundred and two Inquiry cases are not accounted for in the Council District distribution due to the conversion into the new database system.

## FORMAL ALLEGATIONS BY COUNCIL DISTRICT

A Formal complaint is a misconduct complaint that is citizen-initiated (CI) and/or initiated by the Chief of Police (DI). A misconduct complaint involves a complaint that alleges a violation of the law; a violation of a department policy or procedure; or a violation of a city rule or regula-

tion. A single complaint filed by a citizen may contain multiple allegations<sup>15</sup>. For example, a citizen alleging that unnecessary force was used in his/her arrest may also state that the arresting officer was rude or improperly searched their home. This single complaint may have three

different allegations: Unnecessary Force, Rude Conduct, and Unlawful Search.

Illustration 6C shows the Formal allegations by Council District for the time period of January 1 through December 31, 1999.

There are a total of 484 allega-

**Illustration 6C:** Formal Allegations by Council District

Council Districts	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Total Alleg.	%
1 LEZOTTE	0	0	0	1	1	0	0	0	1	0	3	1%
2 POWERS	0	3	0	3	3	8	2	1	11	2	33	7%
3 CHAVEZ	4	0	1	32	10	21	24	12	57	6	167	35%
4 MATTHEWS	1	0	0	6	2	5	2	0	11	1	28	6%
5 DIAZ	0	1	1	14	1	13	3	0	39	0	72	15%
6 FISCALINI	0	0	1	6	0	2	4	1	14	1	29	6%
7 SHIRAKAWA, JR.	0	0	0	4	3	6	4	2	26	3	48	10%
8 WOODY	0	0	0	7	6	3	0	0	8	4	28	6%
9 DIQUISTO	0	0	0	8	2	3	3	0	10	2	28	6%
10 DANDO	0	0	0	5	0	5	1	1	5	2	19	4%
Unknown/Outside City Limits	0	0	0	11	3	2	1	11	1	0	29	6%
Total Allegations	5	4	3	97	31	68	44	28	183	21	484	100%
%	1%	1%	1%	20%	6%	14%	9%	6%	38%	4%	100%	

Allegation Legend	
DH = Discrimination/Harassment	RC = Rude Conduct
ES = Excessive Police Service	UA = Unlawful Arrest
FA = Failure to Take Action	UC = Unofficerlike Conduct
IP = Improper Procedure	UF = Unnecessary Force
MDP = Missing/Damaged Property	US = Unlawful Search

<sup>15</sup> See Appendix D (Misconduct Allegations).

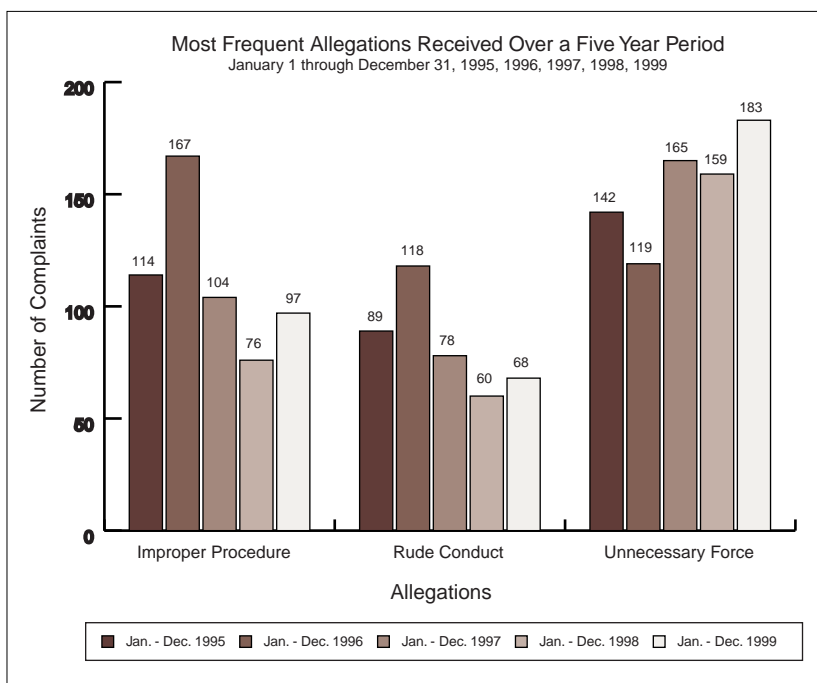
tions, which arose from the 229 Formal complaints received in 1999. Council District 3 accounted for 83 Formal complaints, and produced 167 Formal allegations or 35% of all allegations received. In 1999, the most frequent allegations filed were Unnecessary Force (UF - 183 allegations or 38% of all allegations), Improper Procedure (IP - 97 allegations or 20% of all allegations), and Rude Conduct (RC - 68 allegations or 14% of all allegations).

From Illustration 6D, Unnecessary Force (UF), Improper Procedure (IP), and Rude Conduct (RC) allegations consis-

tently yield the highest number of complaints thorough the years. Illustration 6E, compares the most frequent allegations in a five

year time period from January 1 through December 31, 1995, 1996, 1997, 1998, and 1999.

**Illustration 6E:** The Three Most Frequent Allegations Received Over a Five Year Period



**Illustration 6D:** Five Year Analysis of Formal Allegations

Time Period	DH	ES	FA	IP	MDP	RC	UA	UC	UF	US	Total Alleg.
Jan. - Dec. 1995	17	3	24	114	43	89	34	65	142	47	578
Jan. - Dec. 1996	17	1	20	167	46	118	37	51	119	35	611
Jan. - Dec. 1997	5	4	10	104	42	78	45	40	165	27	520
Jan. - Dec. 1998	4	0	7	76	22	60	29	43	159	7	407
Jan. - Dec. 1999	5	4	3	97	31	68	44	28	183	21	484

Allegation Legend	
DH = Discrimination/Harassment	RC = Rude Conduct
ES = Excessive Police Service	UA = Unlawful Arrest
FA = Failure to Take Action	UC = Unofficerlike Conduct
IP = Improper Procedure	UF = Unnecessary Force
MDP = Missing/Damaged Property	US = Unlawful Search

## ***ANALYSIS OF UNNECESSARY FORCE COMPLAINTS***

There were 229 Formal complaints received from January 1 through December 31, 1999. Of these 229 Formal complaints, one hundred and fourteen (114) complaints were Unnecessary Force cases, that produced 183 UF allegations. Use of Force complaints are divided into two categories: Class I and Class II. Class I cases involve those complaints in which the complainant required emergency medical attention for his/her injuries. Class II cases include those complaints in which the complainant did not require immediate medical care. Of the 183 UF allegations, thirty-six (36) allegations were classified as Class I Use of Force and derived from 22 cases. The remaining 147 allegations met the criteria as a Class II Use of Force in 92 cases.

Illustration 6F, Illustration 6G, and Illustration 6H present a five year

view of the type of force used, the body area afflicted by the force used, and the degree of injury from the force used, respectively. Note that statistical information such as the type of force alleged, body area afflicted, type of force used, and the degree of injury resulting from the force<sup>16</sup> is tabulated based on what is alleged by the complainant. If the initial statement given by the complainant differs from the resulting investigation, the

statistical information is changed on a case by case basis to reflect an accurate accounting on the Use of Force as it relates to the findings. The time period covers from January 1 through December 31 for the year 1996, 1997, 1998, and 1999.

In Illustration 6F, there were a total of 212 different types of force used in 1999. In each complaint, the complainant may have alleged more than one type

**Illustration 6F: Type of Force Used**

Type of Alleged UF	Jan. - Dec. 1996		Jan. - Dec. 1997		Jan. - Dec. 1998		Jan. - Dec. 1999	
	Number	%	Number	%	Number	%	Number	%
Baton	16	10%	27	13%	25	13%	17	8%
Canines	3	2%	0	0%	4	2%	0	0%
Car (officer)	4	3%	14	6%	9	5%	10	5%
Car (complainant)	0	0%	2	1%	2	1%	3	1%
Chemical Agent	7	4%	12	6%	10	5%	10	5%
Gun (officer)	2	1%	3	1%	5	3%	1	0%
Gun (complainant)	0	0%	0	0%	3	2%	0	0%
Feet	22	14%	25	12%	20	10%	19	9%
Ground	6	4%	19	9%	16	8%	21	10%
Hands	60	38%	78	36%	66	34%	85	40%
Handcuffs (tight)	15	10%	12	6%	13	7%	9	4%
Knee	9	6%	9	4%	12	6%	12	6%
Object	4	3%	2	1%	2	1%	1	0%
Other	7	4%	11	5%	6	3%	13	6%
Unknown	1	1%	2	1%	1	1%	11	5%
Total	156	100%	216	100%	194	100%	212	100%

<sup>16</sup> See Appendix E (Use of Force).

of force used by the subject officer(s). For example, a complainant may have alleged that when an officer was making an arrest, the officer pushed the complainant to the ground before placing a pair of handcuffs on tightly. This example would account for two types of force being used: one for forcing the complainant to the ground and one for placing the handcuffs on too tightly.

In Illustration 6F, the four types of force most commonly used on a regular basis are, baton, feet, ground, and hands. In 1999, the officer's use of a baton resulted in injury to the complaint 8% of

the time. This is a slight decrease from prior years. The alleged use of force resulting from the officer using his/her feet, such as leg sweeps or kicking the complaint, made up of 9% of the total Use of Force cases for 1999. This is a decrease from previous years.

The category "ground" includes allegations of being pushed to the ground or being hit/slammed against the ground. This allegation accounted for 10% of the force used, which is an increase in comparison to previous years. The subject officer's use of hands, such as punching, pushing, or grabbing a complain-

ant, is produced the highest number of use of force complaints each year. In 1999, the use of hands accounted for 40% of the force used. This is an increase from previous years.

In Illustration 6G, the area afflicted is divided into five categories: the head, torso, limbs, multiple body parts (MBP), and unknown.<sup>17</sup> Each complaint may allege more than one area of body afflicted by the alleged use of force. For example, a citizen may allege that the officer punched him/her in the stomach and kicked him/her in the knee. The body area injured would be the torso and the limbs. In 1999,

#### **Illustration 6G: Body Area Afflicted by Use of Force**

Area Afflicted by Alleged UF	Jan. - Dec. 1996		Jan. - Dec. 1997		Jan. - Dec. 1998		Jan. - Dec. 1999	
	Number	%	Number	%	Number	%	Number	%
Head	34	34%	41	30%	34	30%	27	20%
Torso	15	15%	18	13%	14	12%	17	13%
Limbs	24	24%	50	36%	35	31%	45	34%
MBP	27	27%	21	15%	27	24%	30	22%
Unknown	0	0%	7	5%	4	4%	15	11%
Total	100	100%	137	100%	114	100%	134	100%

<sup>17</sup> The area of the force alleged is unknown because the case is an open investigation and the area where the force was applied is unclear at the present time.

the distribution of injury was 20% to the head, 13% to the torso, 34% to the limbs, 22% of multiple body parts injured, and 11% were unknown. In Illustration 6G, the injuries to the head decreased, while injuries to the limbs increased over the last years reported total.

In Illustration 6H, the “Degree of Injury” resulting from the alleged use of force ranged from minor to major, and included categories for “None Visible” and “Unknown” degrees of injury.<sup>18</sup> For example, a citizen alleged that the officer pushed him/her to the wall while handcuffed, causing abrasions to

the facial area. This is counted as a minor injury. In 1999, there were 114 UF cases with the following distribution of injuries: 13% major injuries, 4% moderate, 48% minor, 21% had no visible injury, and 13% were unknown degree of injuries. In Illustration 6H, throughout the years, minor injuries remain the highest degree of injuries alleged by the complainant. However, the moderate degree of injuries dropped from 18% in 1996 to 4% in 1999.

#### Illustration 6H: Degree of Injury

Degree of Injury	Jan. - Dec. 1996		Jan. - Dec. 1997		Jan. - Dec. 1998		Jan. - Dec. 1999	
	Number	%	Number	%	Number	%	Number	%
Major	9	10%	19	18%	15	17%	15	13%
Moderate	16	18%	24	22%	18	20%	5	4%
Minor	36	41%	48	44%	40	45%	55	48%
None visible	26	30%	9	8%	10	11%	24	21%
Unknown	1	1%	8	7%	5	6%	15	13%
Total	88	100%	108	100%	88	100%	114	100%

18 The degree of the force alleged is unknown because the case is an open investigation and the degree of injury is unclear at the present time. Major injury required medical attention usually arising from the use of baton. Moderate injury generally resulted from the use of chemical agent, canine, and tight handcuffs. Minor injury included the description of minor bruises, scrapes, or cuts from being grabbed, pushed, pulled or slapped. The category none visible is generally no visible injury detected.

